



EIF 7/10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of

GEORGE J. MURAKAWA, ET AL.

Filed: September 1, 1989

Serial No.: 07/402,450

FOR: METHOD FOR AMPLIFICATION
AND DETECTION OF RNA
SEQUENCES

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Group Art Unit: 1814

Examiner: M. Escallon

#27

PETITION TO THE COMMISSIONER PURSUANT TO 37 C.F.R. §1.181

RECEIVED

Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

JUL 27 1993

Sir:

Pursuant to 37 C.F.R. §1.181, applicants petition the
Commissioner for an order requiring the Examiner to enter the
Reply Brief filed May 7, 1993.

Grounds in Support of Petition

Pages 1 and 2 of the Reply Brief states:

NEW POINTS OF ARGUMENT

This Reply Brief addresses two new points of argument in
the Examiner's Answer. In the ensuing quotations from the
Answer, the new points of argument are underlined.

- [1] Appellants argue that "Mullis et al. do not
provide any 'RNA reference sequence' as required
by step (ii)(b) of claim 18". This argument is
not persuasive. Contrary to appellants'
assertion, Mullis et al. disclose the
amplification of viral RNA in the bridging
sentences between columns 7 and 8. Also, is
disclosed the alternative adding of either one or
two primers so as to facilitate the amplification
second strand target sequence followed by
amplification of both strands by two primers, in
column 9, lines 5-49 and column 10, line 47-57.
Examiner agrees with appellants that Mullis et


al. do not mention that one of the two amplified product[s] is used as "reference sequence". However, Mullis et al. do teach using two different primers to simultaneously amplify two different sequences. Use of control to monitor success of analysis is notorious[ly] well known in the analytic arts. Appellants further argue that "no method for detecting false positive or negative data is taught or made obvious by Mullis et al.". This is not deemed to be persuasive because this is analysis and interpretation of the resulting product of the two sequences which is an expected result. [Answer, pp. 6-7; emphasis added]

The Examiner's refusal to enter the Reply Brief is set forth in the communication dated July 9, 1993. It is pointed out that the Examiner's communication does not dispute that the underlined portions of the quotations from the Examiner's Answer are, in fact, new points of argument as set forth under the heading "First New Point of Argument" at page 2 of the Reply Brief.

Counsel has again reviewed the entire record and maintains the position for the reasons set forth at page 2 of the Reply Brief that the "First New Point of Argument" is in fact "new" and, therefore, that the Reply Brief should be entered.

In the absence of any demonstration by the Examiner that this point is incorrect, this Petition should be granted.

Any fee due should be charged to Deposit Account 09-0948.
A duplicate is enclosed.



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Dated: July 22, 1993

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